

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ONLINE DVD RENTAL
ANTITRUST LITIGATION

No. M 09-2029 PJH

**ORDER DENYING MOTIONS FOR
PRELIMINARY APPROVAL AND
TO DECERTIFY CLASS**

This Document Relates to:

ALL ACTIONS

Plaintiffs' motion for preliminary approval of settlement came on for hearing on February 9, 2011 before this court, and defendant Netflix's motion to decertify the Netflix subscriber plaintiff class came on for hearing on March 9, 2011 before this court. Plaintiffs, individuals representing putative classes comprised of subscribers to Netflix's and Blockbuster's online DVD rental service, appeared through their class counsel at the respective hearings, Robert G. Abrams, Peter Barile, Guido Saveri, Eugene Spector, Jonathan Jagher, William Caldes, Sarah Schalman-Bergen, and Joseph Tobacco. Defendant Netflix, Inc. ("Netflix") appeared through its counsel, Jonathan M. Jacobson, and Dylan Liddiard. Defendants Walmart.com USA LLC ("Walmart.com") and Wal-Mart Stores, Inc. ("Wal-Mart Stores")(collectively "Wal-Mart") appeared through their counsel, Neal Manne. Having read all the papers submitted and carefully considered the relevant legal authority, and for the reasons stated at the hearing, the court rules as follows:

1. The motion for preliminary approval of plaintiffs' global settlement with the Wal-Mart defendants is DENIED. Denial is warranted, in addition to the other reasons stated at the hearing, in view of the court's stated concerns regarding: (1) the Blockbuster subscriber plaintiffs' ability to adequately establish that common issues predominate

1 pursuant to Federal Rule of Civil Procedure 23(b)(3); (2) the potential for inconsistent
2 rulings, should the court grant conditional certification of a Blockbuster class for settlement
3 purposes and then subsequently conclude, within the context of any future motion for class
4 certification in the Blockbuster subscriber action, that certification of a litigation class were
5 *not* warranted; and (3) the likelihood that the Blockbuster class will be able to satisfy
6 antitrust standing requirements. The denial is without prejudice to plaintiffs' ability to renew
7 the motion at a later date.

8 2. Defendant Netflix's motion to decertify the Netflix litigation class is DENIED,
9 for the reasons stated at the hearing.

10
11 **IT IS SO ORDERED.**

12 Dated: March 11, 2011



PHYLLIS J. HAMILTON
United States District Judge